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GENERAL SURVEY OF CONDITIONS IN CHINA

SECTION I. THE LAND AND PEOPLE

A. The land and people

1. The People's Republic of China is a long-established unitary State of many nationalities, situated in Eastern Asia on the western shores of the Pacific Ocean and covering an area of 9,600,000 square kilometres, including some 1,430 million mu of cultivated land (one mu = 0.0667 hectares).

2. Administratively, the People's Republic of China is divided up as follows:

(a) The country is divided into provinces (xing), autonomous regions (zi-zhi qu) and directly governed municipalities (zhixia shi);

(b) The provinces and autonomous regions are divided into autonomous prefectures (zi-zhi zhou), counties (xian), autonomous counties (zi-zhi xian) and cities (shi);

(c) The counties and autonomous counties are divided into townships (xiang), nationality townships (minzu xiang) and towns (zhen).

The directly governed municipalities and large cities are divided into districts (qu) and counties. The autonomous prefectures are divided into counties, autonomous counties and cities.

3. By the end of 1991, the population of China stood at 1,158,230 million or a fifth of the world total, making China the world's most populous country. Population density is 120 inhabitants per square kilometre. Population distribution is uneven, tending to be concentrated in the east along the middle and lower reaches of the Yangtze River, the Pearl River delta, the middle and lower reaches of the Yellow River and the Sichuan (Szechuan) basin. Rural dwellers make up 73.63 per cent of the total population and urban dwellers, 26.37 per cent.

4. Gross national product in 1991 was 1,985,500 million yuan (renminbi), up 7.7 per cent on the previous year. Average peasant household income in 1991 was 708.5 yuan (renminbi), and average urban household income, 1,544 yuan (renminbi). Retail price levels in 1991 were 2.9 per cent up on 1990. Of workers in urban areas, 2.3 per cent were awaiting job assignments. In 1990, China borrowed 18,000 million yuan (renminbi) from abroad.

5. The birth rate in China in 1991 was 19.68 per thousand, the mortality rate, 6.7 per thousand, and natural population growth, 12.98 per thousand.

Children under 14 made up 27.71 per cent of the population; persons aged 64 and over made up 5.99 per cent.

6. According to the fourth population census, taken in 1990, 15.88 per cent of the population aged 14 years and older were illiterate or semi-literate.

B. Status of national minorities

7. Among China's many nationalities, the Han are the largest group, numbering 1,040 million or 91.96 per cent of the total population; besides the Han there are a further 55 separate minority nationalities together numbering 91,200,000 people or 8.04 per cent of the population, including Mongols, Hui, Zang (Tibetans), Uighurs, Miao, Yi, Zhuang, Puyi, Koreans, Mon, Dong, Yao, Bai, Tuchia, Hani, Kazakhs, Dai and Li, all of which number over 1 million. There are 24 different nationalities living in Yunnan Province, and 12 in the Xinjiang Uighur Autonomous Region. Han Chinese is spoken throughout the country, but in areas where large numbers of any particular minority live, the language and script of that minority are also used.

8. Article 4 of the Chinese Constitution states that all nationalities in the People's Republic of China are equal. The State protects the lawful rights and interests of the minority nationalities and upholds and develops ties of equality, unity and mutual assistance between the various nationalities. Discrimination against or oppression of any nationality is prohibited, as is any action injurious to ethnic unity or causing ethnic divisions.

9. Given the extent and degree to which Chinese minority nationalities live in compact communities and their political, economic, cultural and other ties, the State applies a system of regional autonomy in areas inhabited by minorities, with autonomous authorities practising self-rule. National autonomous areas are divided into autonomous regions, autonomous prefectures and autonomous counties. At present there are 159 minority districts and autonomous areas (5 autonomous districts, 30 autonomous prefectures and 124 autonomous counties (banners)) which together account for 64 per cent of the total land area of China. In areas inhabited by two or more nationalities the State has set up 1,700 nationality townships, making it even easier for the minorities living there to enjoy equal rights.

10. Every national autonomous area is an inalienable part of the People's Republic of China. The authorities set up in national autonomous areas are the people's congresses and governments of the regions, prefectures and

counties concerned. The autonomous authorities are a kind of State political organ. They exercise the authority bestowed on local State organs under chapter 3, section V of the Constitution, while at the same time exercising autonomy in accordance with the Constitution, the law on regional national autonomy and other legislation.

11. The people's government in national autonomous areas operates under a system whereby responsibility is borne by the regional chairmen, prefects and county chiefs; these are accountable to the people's assemblies at their respective levels and to higher State organs. The people's government in each national autonomous area is a State organ under the direction of the State Council. The law also specifies that those in charge of the various administrative and other bodies in national autonomous areas (the chairman and vice-chairmen of the standing committees of people's congresses in autonomous regions, prefectures and counties, the chairmen of autonomous regions, prefects, county chiefs and so forth) must be of the nationality exercising regional autonomy.

C. Religious belief

12. China is home to many different religions, including Buddhism, Daoism, Islam, Catholicism, and Christianity. Buddhism, Daoism and Islam are fairly widespread. As there are no strict procedural restrictions on taking up or abandoning a religion, it is hard to put a number on the country's Buddhist and Daoists; the Hui, Uighur, Kazakh, Tatar, Tadjik, Uzbek, Kirghiz, Tongxiang (Tunghsiang), Salar and Paoan (Bonan) peoples, among others, practise Islam, and together number over 17 million people; Catholics and Christians in China number between 3.5 and 4.5 million.

SECTION II. POLITICAL STRUCTURE

A. Political history

13. As a nation, China is one of the oldest on Earth. Together the country's various nationalities have built a bright and glorious history. China was one of the first nations on Earth with a developed economy and culture and has had a written history for nearly 4,000 years. The forebears of all China's peoples together built up a rich and varied culture in ancient times, and shared a long lasting, originally clan-based society. In the twenty-first century BC it was already a slave-owning society. In the Warring States period, beginning in 475 BC, a feudal society began to emerge. In 1911 AD a revolution overthrew the Ch'ing Dynasty, putting an end to 2,000 years of

feudal empire. On 1 October 1949 the Chinese people, after a long and arduous struggle, founded the People's Republic of China. Since then, State power has been directly in the hands of the Chinese people, making them the masters of the country.

B. The pattern of political organization

14. The Constitution of the People's Republic of China is based on a summing-up of the historical experiences of China's peoples, and was drafted after extensive consultation of the views of the masses. It regulates the most fundamental points of principle relating to State affairs and life in society; the State political system, the economic system, the pattern of political organization, citizens' rights and obligations and other such important matters. The Constitution was passed and is subject to amendment by the National People's Congress, and the rules it lays down override and underpin all other laws and regulations. The present Constitution was adopted by the Fifth National People's Congress at its fifth session, on 4 December 1982, and contains a preamble and four chapters, together comprising 138 articles, dealing with general principles, the fundamental rights and duties of citizens, the structure of the State, and the national flag, the national emblem and the capital.

15. Under the Constitution, politics in the People's Republic of China is organized in the form of people's congresses operating on the principle of democratic centralism, its essence consisting in the fact that all the power of the State belongs to the entire body of the people. The National People's Congress is made up of deputies elected for five-year terms by the provinces, autonomous regions and directly administered municipalities.

16. The apparatus of State comprises the National People's Congress and its Standing Committee, the presidency of the People's Republic of China, the State Council, the Central Military Commission, the Supreme People's Court, the Supreme People's Procuratorate, people's congresses and people's governments at every local tier, and the autonomous organs, people's courts and people's procuratorates of the national autonomous areas.

17. The National People's Congress is the supreme nationwide body whereby the people exercise State power. It has the power to pass laws and to decide on other important matters relating to the life of the State. It elects and can recall the President and Vice-President of the People's Republic of China, the Chairman of the Central Military Commission, the President of the Supreme

People's Court and the Procurator-General of the Supreme People's Procuratorate, and appoints and can dismiss the Premier and Vice-Premiers, State Councillors, Ministers and commission chairmen, the Auditor-General and the Secretary-General of the State Council.

18. The specific duties of the National People's Congress include: amending the constitution and overseeing its implementation; passing and amending other national legislation; electing, appointing and recalling senior State officials; deciding on important matters of State; overseeing the activities of other State organs it establishes, and exercising such other functions as may be required.

19. The Standing Committee of the National People's Congress is the permanent organ of the Congress, and is empowered to exercise certain powers of State in accordance with the Constitution when the Congress is not in session. It comprises a chairman and a number of vice-chairmen, a secretary-general and other members elected by the Congress.

20. The powers of the Standing Committee include: interpreting the Constitution and overseeing its implementation; enacting legislation within the bounds laid down by the Constitution; interpreting the law; examining and ensuring that administrative rules and local regulations are in accordance with the Constitution and national legislation; reviewing and approving adjustments to the plan for national economic and social development and other State Budget Department proposals; overseeing the activities of the State organs; and exercising such other functions as are conferred upon it by the National People's Congress.

21. The presidency is a crucial part of the machinery of State in the People's Republic of China; pursuant to decisions by the National People's Congress and its Standing Committee, the President promulgates laws, appoints the Premier and Vice-Premiers, ministers and commission chairmen on the State Council, declares war, proclaims mobilizations, and ratifies and abrogates treaties and important agreements with other countries.

22. The State Council (or the Central People's Government) is the executive arm of the highest organ of State authority, the supreme State executive organ. Under the Constitution, the State Council is responsible to and must report on its activities to the National People's Congress and its Standing Committee. It comprises the Premier, several Vice-Premiers, several State Counsellors, the heads of each government Ministry and Commission, the

Auditor-General, and the Secretary-General, ultimate authority residing with the Premier. The State Council is responsible to the highest organ of State authority, but the Prime Minister is not personally responsible. The local people's government at every level is a State executive organ under the unified leadership of, and subordinate to, the State Council. The Council meets in plenary and in executive session. The plenary comprises all members of the Council. Under the organizational law on the State Council, important matters on the Council's agenda must be decided upon after discussion in an executive session or the plenary Council.

23. The responsibilities of the State Council include: enacting and promulgating regulations; adopting measures; submitting motions to the National People's Congress or its Standing Committee; directing and supervising the activities of its subsidiary ministries and commissions and local bodies at every level; directing and administering national defence, civil affairs, cultural and educational activities, and conducting foreign affairs; appointing and dismissing administrative personnel; and fulfilling such other responsibilities as are assigned to it by the supreme organ of State power.

24. Each of the ministries under the State Council has one minister and two to four deputy ministers. Each commission has one chairman and two to four vice-chairmen, plus five to ten members. Every ministry and commission is required to exercise leadership, organization and management within the limits of its jurisdiction, and the instructions, directives and regulations it issues must be in keeping with the law and the administrative instructions and decisions issued by the State Council.

25. The Central Military Commission is the highest guiding body of the national defence forces, and ultimate responsibility for it rests with its Chairman; the Commission is responsible to the National People's Congress and its Standing Committee.

26. Local people's congresses are the organs of power at each level throughout the country; they guarantee respect for and compliance with the Constitution, law and administrative regulations within their respective districts, and exercise such other authority as is entrusted to them by the Constitution and laws. The people's government at every level is the local executive arm of the national organs of State power and of the State administration; within the limits laid down by the law it manages economic,

educational, scientific, cultural and other administrative matters within the district concerned.

27. The people's government at every level is subordinate and accountable to the people's congress at the corresponding level but is also accountable to the people's government at the next higher level; the people's governments at every level are State administrative organs under the unified leadership of the State Council, and must obey its unified leadership.

28. The people's courts are judicial organs of the State. Under the Constitution and the Organization of the People's Courts Act, the People's Republic has established the Supreme People's Court, local people's courts and special people's courts. Local people's courts are divided into basic-level, intermediary and higher courts. Special courts are courts set up by the State to hear specially designated cases in specific domains: military courts, railway courts, marine courts, etc. Ordinary and special people's courts at every level are made up of a president and a vice-president, a presiding judge and deputy presiding judge and a number of judicial personnel, and has a judicial committee. People's courts include criminal, economic, civil and administrative chambers. The Supreme People's Court is the highest judicial organ in China. It oversees the judicial activities of people's courts and special people's courts at every local level. It is responsible to, and reports on its activities to, the National People's Congress and its Standing Committee. Local people's courts at every level are responsible and must report on their activities to the corresponding people's congress and its Standing Committee, and are also subject to supervision by courts at higher levels. Under the law, people's courts operate independently and are not subject to interference by administrative bodies, social groups or individuals. The people's courts apply the principle that the court of second instance is the court of final judgement.

29. The people's procuratorates are State legal supervisory bodies and part of the State judicial machinery. Under the Constitution and the Organization of the People's Procuratorate Act, the People's Republic of China has established the Supreme People's Procuratorate, local people's procuratorates at each level and military and other specialized people's procuratorates. Local people's procuratorates are divided into provincial, autonomous-region and directly-administered-municipality main and sub-procuratorates; autonomous-prefecture and provincially-managed municipal people's

procuratorates; and county, municipal, autonomous-county and municipally-administered district people's procuratorates. The Supreme People's Procuratorate oversees the activities of the local and special procuratorates and the higher procuratorates oversee the activities of the lower. The Supreme People's Procuratorate is responsible to the National People's Congress and its Standing Committee, and the local people's procuratorates are responsible to the State judicial bodies which established them and to higher-level procuratorates.

SECTION III. THE LEGAL SYSTEM FOR PROTECTING HUMAN RIGHTS

A. Judicial, administrative and other bodies with jurisdiction over human rights

30. The judicial, administrative and other bodies with jurisdiction over human rights in China are the people's courts and people's procuratorates, together with the public security, law enforcement, administrative and investigative organs subordinate to the State Council and local government.

31. The duties of the people's courts are to hear criminal, civil and administrative cases and economic disputes independently, in accordance with the law, and by means of such hearings to punish all criminals, rule on all matters raised in litigation, uphold respect for the laws and legal system of the State, protect the social order, and ensure that citizens' lawful property and personal, democratic and other rights are not infringed.

32. Basic-level people's courts serve as the courts of first instance in criminal, civil, economic and administrative cases except where the law or regulations specify that higher people's courts or special people's courts shall have jurisdiction; they deal with civil disputes which do not need to be brought to formal trial, and with petty criminal cases; and they direct the activities of people's conciliation committees.

33. Intermediate people's courts serve as the courts of first instance in those cases where the law specifies that they have jurisdiction, and in cases referred to them by basic-level people's courts; they hear appeals and counterappeals against verdicts and rulings by basic-level people's courts; and they hear counterappeals brought by the people's procuratorates under the adjudication supervisory procedure.

34. The higher people's courts serve as courts of first instance in those cases over which the law stipulates that they have jurisdiction, and over cases referred to them by lower people's courts; they hear appeals and

counterappeals against decisions and rulings issued by intermediate people's courts; and they hear counterappeals brought by the people's procuratorates under the adjudication supervisory procedure.

35. The Supreme People's Court is by law assigned jurisdiction over important criminal cases of a national nature, over civil suits, economic disputes and administrative suits of national significance and over cases in which it considers that it should serve as the court of first instance; it hears appeals and counterappeals against decisions and rulings by higher and special people's courts; and it hears counterappeals brought by the Supreme People's Procuratorate under the adjudication supervisory procedure. It is also empowered to interpret for judicial purposes the specific points of law used by the courts in their judicial activity.

36. Among the special courts, the military tribunal was set up as the judicial organ of the People's Liberation Army, to adjudicate on military offences committed by serving personnel and other criminal cases; the marine tribunals adjudicate as courts of first instance in marine and merchant marine cases, including cases involving foreign nationals; the rail transport tribunals adjudicate in criminal cases occurring on the railways and disputes over infringements of rights. Appeals from marine tribunals are heard by a higher court in the same district. Appeals from rail transport tribunals are heard by intermediate rail transport tribunals.

37. Under the Organization of the People's Procuratorates Act, the duties of the people's procuratorates are:

(a) To investigate cases of treason, separatist activity and other serious offences imperilling the political, legal, statutory and governmental unity of the State;

(b) To investigate criminal cases it receives directly;

(c) To screen cases investigated by the public security organs and decide whether to arrest and prosecute the culprits or to drop the case; and to supervise the public security organs' handling of the investigation and ensure that it is lawful and effective;

(d) To bring and conduct the prosecution in criminal cases; and to supervise the activities of the people's courts to ensure that they are lawful and effective;

(e) To supervise the execution of sentence and rulings in criminal cases and the activities of prison, custodial and reform-through-labour authorities to ensure that they are lawful and effective.

38. In accordance with the law, the people's procuratorates guarantee the rights of the citizen to lodge complaints against State employees who break the law, and investigate and apportion responsibility for violations of citizens' personal, democratic and other rights.

39. The public security organs in China are State authorities that protect the social order and public security, and belong within the system of administrative authorities in the Chinese machinery of State, but under the law they also have certain judicial powers; they are responsible in the case of criminal prosecutions for investigating the facts, making arrests and conducting preliminary hearings and for coercive measures such as holding people in custody. Besides fulfilling their judicial functions under the Code of Criminal Procedure, the public security organs must also comply with the People's Police regulations, the Security Administration Punishment Regulations and the public order regulations issued by the Ministry of Public Security, and with the various local regulations and rules covering public security issued by local people's congresses and governments.

40. As the law assigns different functions to people's courts, people's procuratorates and the public security organs, so they divide their responsibilities, cooperating and interacting in the prosecution of criminal cases as the law dictates, for only within the bounds of shared responsibilities can they exercise their own powers: they cannot substitute for one another. Article 3 of the Code of Criminal Procedure states that responsibility for investigation, detention and conducting preliminary hearings in criminal matters rests with the public security organs. Authorizing arrests and investigations (including inquiries), and bringing prosecutions is the responsibility of the people's procuratorates. Trials are the responsibility of the people's courts. There are special provisions to guarantee the independence of the courts and procuratorial organs, in the Chinese Constitution, the Organization of the People's Courts Act and the Organization of the People's Procuratorates Act.

41. The judicial organs are part of the State executive machinery - the Ministry of Justice and the judicial organs and criminal reform authorities at each tier of local government, under the authority of the State Council.

Their main responsibilities are to carry out punishments and reform under detention, to oversee reeducation through labour and legal education, and to supervise lawyers and notaries; to direct the activities of the people's mediation committees; to supervise and direct the legal faculties in political and legal colleges and in institutes of higher education; and to provide guidance in international judicial assistance efforts and the production of judicial and legal publications and periodicals.

42. To ensure full, timely and effective administrative supervision, the State has established a special procuratorial authority responsible for supervising and checking up on how State bodies and their employees implement State law, regulations, decisions and rulings; it receives and hears complaints and reports of unlawful or undisciplined behaviour by State authorities and their employees; in accordance with the law it registers and investigates cases and, based on the results of its inquiries, makes recommendations to the competent administrative organ or issues warnings and written demerits or orders demotions, dismissals and other such sanctions. This authority is not the same as the administrative chambers set up by the people's courts under the Administrative Suits Act. The function of the administrative chambers is to hear administrative cases, in particular cases brought by individuals, bodies corporate and other organizations who consider that a State body or its employees have by their specific actions infringed their lawful rights and interests.

B. Compensatory measures for injury to individual rights and compensation and rehabilitation systems for victims

43. In China, citizens' personal rights and liberties are protected by the Constitution and the law. Broadly speaking, there are two aspects to State protection for personal rights and freedoms: the first consists in preventing citizens' personal rights and freedoms from injury by strictly applying the law relating to investigations, arrests and other encroachments on personal rights; the second, in the fact that if a citizen's personal rights are violated, he may by law register a complaint, file a report or lodge an appeal.

44. Article 41 of the Constitution states: "Citizens who have suffered losses through infringement of their civic rights by any State organ or functionary have the right to compensation in accordance with the law"; articles 2 and 67 of the Administrative Suits Act state that citizens, bodies corporate or other organizations which consider that their lawful rights and

interests have been infringed through the specific actions of an administrative organ or an employee thereof are entitled under the Act to bring suits before the people's courts, and may also seek compensation. Article 68 of the same Act states: "A State administrative organ or employee thereof who deliberately or through grave error causes a citizen injury shall be held responsible for making compensation, and the costs of such compensation shall be met out of local government resources. The people's government at each level may require the administrative body responsible to meet some or all of the costs of compensation."

45. Furthermore, articles 53 and 54 of the Code of Criminal Procedure also stipulate that the victim of a crime who has suffered injury as a result of criminal action by the defendant is entitled to bring a concomitant civil suit during the hearing of the criminal case. Where necessary, the people's court may seal or confiscate the accused's property. The concomitant civil suit must be heard together with the criminal case. Only where a combined hearing might excessively delay the criminal trial is it permissible to try the criminal case first and thereafter proceed, using the same trial arrangements, to hear the concomitant civil suit. In the event of refusal to honour liability to make compensation, the law permits the plaintiff to apply to the people's courts for enforcement of execution.

46. Chinese law also contains provisions on reparation for moral injury, as for example in article 32 of the Penal Code, which states: "Where a crime is too trivial to warrant criminal penalties, punishment may be waived but, depending on the circumstances of the case, a reprimand may be issued or the culprit may be ordered to sign a statement of repentance, make an apology, pay reparations, or compensate for the loss, or be subjected by the competent department to an administrative penalty." The Security Administration Punishment Regulations contain corresponding provisions on moral compensation. Such compensation is for the loss suffered by the injured party, not a form of punishment for the culprit. The extent of the compensation depends on the circumstances of each case.

47. The State judicial and administrative organs currently base compensation to victims on the principle of full and fair redress. There are no specific provisions in law relating to the amount or manner of compensation: these are determined by the judicial organs in accordance with the nature of each specific case. If the victim does not receive compensation or insufficient

compensation is paid, the courts can apply coercive measures in accordance with the law. To promote the use of compensation, the Chinese legislature is currently pressing ahead with the formulation of a compensation act. Until the Act is passed, it is important to note that by means of an administrative or judicial ruling payment of costs such as medical expenses, lost earnings or food subsidies may be negotiated or ordered by the administrative authorities, or a concomitant civil suit may be brought along with a criminal case so that the court can order compensation to be paid.

C. How the Constitution and other laws protect the various rights laid down in human rights instruments

48. China has always respected and acknowledged the purposes and principles of the Charter of the United Nations concerned with the protection and promotion of human rights. It admires and supports efforts by the United Nations to promote human rights and fundamental freedoms generally, and plays a constructive part in work within the United Nations system to draft and adopt human rights legal instruments. Since 1980, it has signed, ratified and acceded to a series of international human rights agreements, including the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention relating to the Status of Refugees, the Protocol relating to the Status of Refugees, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child.

49. All the rights set forth in human rights instruments are protected by the Chinese Constitution and separate regulations. For instance, the Chinese Constitution specifies that all citizens are equal before the law (art. 33); citizens' personal freedom is not subject to violation (art. 37); their homes are inviolable (art. 39); the State protects their right to own lawfully earned income, savings, houses and other lawful property (art. 13); citizens' personal dignity is inviolable (art. 38); citizens have freedom of speech, of the press, of assembly, of association, of procession and of demonstration (art. 35); they have freedom of religious belief (art. 36); they have the duty as well as the right to receive an education (art. 46); they have the right to lodge complaints and lay charges against State organs and their personnel, and

to obtain compensation (art. 41); and every nationality has the right to use and develop its own language and script.

50. Other individual statutes and regulations such as the Marriage Act, the General Principles of Civil Law, the National Regional Autonomy Act, the Assemblies, Marches and Demonstrations Act, the Civil Suits Act, the Penal Code, the Code of Criminal Procedure, the Administrative Suits Act, the Compulsory Education Act and the Environmental Protection Act contain specific provisions protecting the rights of Chinese citizens.

D. How human rights instruments fit into the State legal system

51. To render international human rights agreements consistent with domestic law and make them a part of the domestic legal system, under article 67, subsection 14, of the Constitution, accession by China to an international human rights agreement must be approved by the Standing Committee of the National People's Congress. Once approved, the instrument is binding under Chinese law and China must honour the corresponding obligations: no further special legal transformation is required to turn it into domestic law.

52. Can an international convention cause a conflict with domestic law? Simply stated, when China concludes or becomes party to an international treaty, it pays very close attention to the question of harmony between the treaty and domestic law, and no conflict of principle can arise. In the event of a discrepancy between the international treaty and domestic law on any specific provision, the treaty takes precedence unless China entered a reservation upon ratifying or acceding to it. This is clearly stated in a number of pieces of legislation. As regards punishment, where an international human rights instrument makes no specific provision a domestic law corresponding in purpose to the treaty is used for guidance in such a manner as to preserve the thrust of the human rights agreement.

E. Can human rights instruments be directly invoked or enforced through the courts and administrative machinery, or must they be transformed into domestic law or regulations before they can be applied by the competent authorities?

53. In China, any international human rights agreement, after approval by the legislature, establishes obligations which China must comply with. The judicial and executive authorities and all public associations concerned then apply the agreement within their respective spheres of competence. To resolve specific questions of penalties for which an agreement makes no provision, the overwhelming majority of treaties have to be enforced by means of domestic

laws corresponding in purpose. In the event of discrepancies between domestic law and an international human rights agreement ratified or acceded to by China, the international agreement will take precedence unless China has entered a reservation to it.

F. Is there any machinery or State system responsible for supervising the enforcement of human rights?

54. Supervision of the enforcement of international human rights agreements in China is of a piece with supervision of the enforcement of domestic law. The Chinese legal supervisory system includes supervision by the organs of State power, by administrative bodies, by judicial organs and by the public.

55. Supervision by the organs of State power means that the National People's Congress and its Standing Committee supervise the enforcement of the Constitution and laws: people's congresses at every level and the standing committees of people's congresses from the county level upwards guarantee respect for and compliance with the Constitution, law, administrative regulations and local ordinances within their respective administrative districts. There are two aspects to supervision of the way the Constitution and law are applied: the first entails checking whether each individual law, administrative regulation, local ordinance and rule is consistent with the spirit and letter of the Constitution; the second entails checking to see whether the Constitution is breached by the actions of the State machinery, any public association or any citizen. The National People's Congress is empowered to amend or rescind any law or regulation in breach of the Constitution, including inappropriate decisions by the Standing Committee; the Standing Committee of the National People's Congress is empowered to rescind administrative regulations, decisions and rulings that contradict the Constitution or law, and local regulations and resolutions passed by the organs of State authority in provinces, autonomous regions and directly administered municipalities which contradict the Constitution, law or administrative regulations. Local people's congresses and their standing committees at the county level and above are empowered to rescind inappropriate decisions and rulings by the people's government at the same level and inappropriate resolutions passed by lower level people's congresses.

56. Supervision by administrative bodies means that higher-level administrative organs oversee lower-level ones, and administrative organs oversee business and industrial work-units and individual citizens to ensure that they comply with and respect administrative laws and regulations.

57. In 1986, a resolution passed at the eighteenth session of the Sixth National People's Congress set up procuratorial bodies to supervise the manner in which State organs and their employees enforce State law, regulations, decisions and rulings, to receive reports and complaints about State bodies and their employees who break the law or breach discipline, register and investigate cases in accordance with the law and, depending on the results, to make recommendations to the competent administrative body, or issue cautions and written demerits or order demotions, dismissals or other such sanctions.

58. Under the heading of judicial supervision, the Supreme People's Court monitors verdicts and rulings by lower people's courts which have already acquired legal force, and higher people's courts monitor verdicts and rulings by people's courts below them which have already acquired legal force. If they discover an error in fact or law they are entitled to review the case or order the lower court to rehear it. If the president of a people's court discovers an error in a verdict or ruling by his court which has already entered into force, he must refer the matter to the judicial committee for action. The judicial activities of lower people's courts are monitored by higher people's courts.

59. The people's procuratorates are special legal supervisory bodies whose specific functions include overseeing investigations, trials and prisons, criminal abuse of their position by State employees, and supervising civil trials and administrative suits. They oversee the law through the exercise of their procuratorial authority. They function as statutory supervisory bodies not by monitoring how all laws are enforced, but in accordance with the laws themselves, exercising their procuratorial authority within definite limits. People's procuratorates at each level supervise State organs and their employees, but are required to mount investigations and apportion responsibility only when serious breaches of the law occur. In the case of ordinary breaches of policy or discipline, it is the supervisory bodies that intervene.

60. Public supervision refers to the extensive and unprompted participation, in various forms by the masses of the people, in supervising enforcement of the law by State employees. It may take the following forms:

- Supervision by public organizations: people's political consultative conferences oversee the exercise of State affairs and

compliance with the Constitution and law by means of consultations, discussions, criticisms and proposals;

- Supervision by public opinion: the masses of the people, through newspapers, the radio and other media, unmask any kind of unlawful or undisciplined behaviour, and support and oversee the judiciary as it punishes crimes in accordance with the law;
- Supervision by the masses: this refers to direct involvement by the masses in statutory supervision, including the enactment, application and enforcement of legislation. The State provides ample opportunity and safeguards for this, for example by setting up reception centres, mail offices and telephone links.

SECTION IV. PUBLICIZING HUMAN RIGHTS INSTRUMENTS

61. The Chinese Government extensively publicizes and disseminates the international Human Rights instruments it recognizes or accedes to, to heighten awareness of the rights they proclaim among the public and the bodies concerned.

62. According to statutory procedure, international human rights instruments for ratification or accession by China must be studied and discussed by the relevant Government departments and then referred to the Standing Committee of the National People's Congress for approval; once ratified, the Government will publicize them throughout the country and the departments concerned will begin to put them into effect.

63. Human rights instruments are publicized chiefly through the daily news, television and news broadcasts, the press etc. Government bodies or popular organizations may hold meetings, print and distribute material on the subject, organize one-day city-wide or nationwide publicity campaigns, produce reports, organize lecture tours, or photographic exhibitions, artistic displays and so forth to spread the word. The rights of the young, the elderly and the handicapped are publicized in courses on the legal system given at primary and secondary schools, and, in the case of the elderly and disabled, in the streets and houses where they live, to make sure that they are aware of their rights; tests, and compilations such as the "Survey of United Nations material on crime prevention and related subjects", are used to publicize such rights among State employees, in particular public security, procuratorial, court and judicial staff.

64. Many public research institutes and institutions of higher learning have in recent years set up human rights faculties to conduct specialized research on human rights, and they often run local or national seminars.

65. Such publicity and propaganda activities, when held in areas inhabited by minority nationalities, tend to be staged in the language of the nationalities concerned. Television broadcasts and publications in such areas also use the languages of the local minorities.

66. The Government also uses publicity designed to promote the general public's knowledge of the legal system, including international human rights instruments, to enhance public awareness of the legal system. In 1985 it passed a resolution calling for a five-year nationwide drive to extend people's general knowledge of the law. According to the statistics, by 1988 among 750 million subjects of ordinary law, 520 million had received some general legal education. To consolidate and expand upon the fruits of the five-year drive, the Government has passed another resolution whereby beginning in 1991, again for a five-year period, it will continue to mount a wide variety of publicity and educational activities concerned with the legal system.

67. The Ministry of Foreign Affairs of the People's Republic of China is responsible for transmitting reports on compliance with international human rights treaties to the special bodies set up under those treaties. It gathers the material and information for the reports from the domestic news media, public associations and government departments. What goes into a report is not normally a subject for public discussion, but the report, once finalized is made available to the public.